IN THE

SUPREME COURT OF THE UNITED STATES.

No. 38.

OCTOBER TERM, 1962.

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

BRIEF FOR APPELLANTS.

DAVID PREVIANT,
212 West Wisconsin Avenue,
Milwaukee 3, Wisconsin,
CHARLES HACKLER,
1621 West Ninth Street,
Los Angeles 15, California,
Attorneys for Appellants.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

Cases Cited.

Statutes Cited.

Miscellaneous Cited.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 38.

OCTOBER TERM, 1962.

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

BRIEF FOR APPELLANTS.

OPINION BELOW.

The opinion below is reported in 196 F. Supp. 12 and appears at pages 40 through 55 of the record.

JURISDICTION.

This civil suit was brought under Section 4 of the Sherman Anti-Trust Act, 15 U. S. C., Sec. 4, to restrain certain activities alleged to be in violation of Section 1 of that Act. The judgment of the court below was entered on July 14, 1961, and a notice of appeal filed on July 26, 1961. The jurisdiction of this Court to review the judgment below, by direct appeal, is conferred by 15 U. S. C., Secs. 28 and 29, and 49 U. S. C., Secs. 44 and 45. Probable jurisdiction was noted on January 15, 1962 (R. 82).

QUESTIONS INVOLVED.

This is a civil action, under the Sherman Anti-Trust Act, to restrain a labor union from engaging in price fixing and customer allocation practices pursuant to an agreement between the union and a group of its truck driver members known as peddlers. The owner-driver-peddlers are independent contractors even though their only asset is a small equity in a truck and their only skill is the ability to drive a truck. The court below enjoined not only conduct of the type found to be unlawful, but also entered an order requiring the union to expel all such members and to refrain from admitting such persons to membership in the future. The questions presented are whether those portions of the judgment relating to the expulsion and readmission of owner-driver-peddlers:

1. Unlawfully deny to the Appellant its right to determine the conditions of acquiring and retaining membership in the Union conferred by the Clayton, Norris-LaGuardia and National Labor Relations Acts.

2. Unlawfully deny to the Appellant and its members rights of due process of law and freedom of association.

STATUTES INVOLVED

The statutes primarily involved are: The Sherman Anti Trust Act, Sections 1 and 4, 15 U. S. C., Sections 1 and 4; the Clayton Act, Sections 6 and 20, 15 U. S. C., Section 17, and 29 U. S. C., Section 52; the Norris-LaGuardia Act, Section 4, 29 U. S. C., Section 104; and the National Labor Relations Act, Section 8 (b) (1), 29 U. S. C., Section 158 (b), (1). These statutory provisions are set forth in Appendix A, *infra*, p. 21.

STATEMENT

Appellant, Los Angeles Meat and Provision Drivers Union, Local 626, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (referred to as the "Union") is a labor organization with a membership of approximately 2,400 persons (R. 56). Most of the Union's members are truck drivers engaged in loading, unloading and transporting meat and meat products for packing houses and related employers (R. 56). Between October, 1954, and May, 1959, the period covered by the complaint, there were 35 to 45 owner-driver-peddlers who were members of the Union (R. 56). Only four of the owner-driver peddler union members were joined as parties to this proceeding (R. 57). Appellant Singer, at all times material, was a business representative but not an officer of the Union (R. 57).

On May 27, 1959, the Justice Department filed a civil complaint alleging that the Union and its owner-driver peddler members were engaging in conduct which violated Section 1 of the Sherman Anti-Trust Act, 15 U. S. C., Sec. 1 (R. 1-12). The parties entered into detailed factual stipulations in which the Union consented to a finding that price fixing and account allocation activities engaged in by the Union and its owner-driver peddler members were unlawful (R. 24, 27, 29-30). The Union does not challenge those portions of the decree which restrain price fixing, account allocation and related conduct.

The owner-driver-peddler purchases grease[1] from hotels, restaurants and institutions. The owner-driver-peddler then transports the grease in a truck, which he either owns or rents, to the plant of a processor (R. 57). Owner-

[1] "Restaurant grease is waste grease resulting from the preparation of foods in kitchens of restaurants, hotels and institutions" (R. 57-58).

driver-peddlers have no established place of business, no employees and no capital investment except a small equity in a truck (R. 57). Moreover, the owner-driver peddlers have no skill or special qualifications except the ability to load, unload and drive a truck (R. 57). Their earnings consist of the difference between the purchase and sale price of grease, reduced by the cost of operating a truck (R. 57), but they are not considered employees of the processor (R. 57).

During the 1954-1959 period involved in this case, there were eight processors in Los Angeles County (R. 58), six of whom acquired all or a substantial part of their grease from owner-driver peddlers (R. 58). All of the processors employed members of the Union conceded to be bona fide employees (R. 73), and four of the processors employed employee-union members to pick up and transport grease from restaurants and other institutions to the processor's plant (R. 59).

The judgment entered by the court below contains detailed restraints against price fixing, account allocation, and related acts (R. 76). In addition, the judgment confers rights of visitation to insure future compliance (R. 77). The judgment further requires the Union to expel its owner-driver-peddler members and to refuse to admit such persons to union membership in the future (R. 75-76).

In ordering the union to expel its owner-driver peddler members, the court below stated that such persons were not a proper subject of unionization in the absence of proof of competition between the peddlers and employee members of the Union (R. 47). And, according to the court below, no "competition" exists in this case (R. 48). Having concluded that owner-driver-peddlers were not a "proper subject of unionization" (R. 48) the court below felt free to invoke and rely upon cases involving divestiture of illegally acquired stock. Upon such authority the Union was ordered to expel its peddler members.

SUMMARY OF ARGUMENT.

A decree issued by a single judge in a civil anti trust case is here for review. Upon the stipulation of the Justice Department and the Union, the court below permanently restrained various acts prohibited by the Sherman Act. These features of the decree are not challenged; however, the Union does challenge those portions of the decree which require it to expel members who are owner driver-peddlers. Anti-trust decrees which come here directly are for that reason subject to the "most careful scrutiny of this Court." *International Boxing Club v. United States*, 358 U. S. 242, 253.

The Sherman Act does not contain a direct reference to labor organizations and as applied to labor organizations it cannot be read apart from the Clayton and Norris-La Guardia Acts. *United States v. Hutcheson*, 312 U. S. 219, 231. A labor organization does not forfeit the protection of these statutes as a consequence of engaging in conduct proscribed by the Sherman Act. *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 812.

In statutes such as the Clayton, Norris LaGuardia and the Labor Management Relations Act, all of which are concerned expressly with labor unions, the Congress has manifested a plain intention to refrain from interfering with the right of unions to determine their own membership. The expression of policy embodied in these statutes should serve as an admonishment to courts exercising anti trust jurisdiction to eschew the role of arbiter of the internal affairs of labor organizations.

The interdependent character of an industrial society is such that workers "are bound to be affected by the standard of wages of their trade in the neighborhood." *American Steel Foundries v. Tri City Council*, 257 U. S. 184,

209. During the past twenty five years the conditions of employment in the transportation and service trades have been constantly under assault as a consequence of the owner-driver peddler system. *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91; *Bakery & Pastry Drivers v. Wohl*, 315 U. S. 769; *Local 24 v. Oliver*, 358 U. S. 283. This history of wage and job competition is more than adequate to support the Union's claim of right to maintain as members the owner driver peddlers. Similarly, this history together with the experience of the Interstate Commerce Commission (*American Trucking Association v. United States*, 344 U. S. 298, 304-306) renders untenable the suggestion that such persons are not the "proper subject of unionization" (R. 48).

Divestiture and dissolution precedent is patently inapposite to this case. A union card is not a stock certificate and a trade union is not a commercial monopoly. Although both a union card and a stock certificate are printed on paper, there are no further similarities between the two. Citation of divestiture authorities cannot change this. Since the interests of a union member are in fact radically dissimilar from those of a stockholder, cases concerned with stock divestiture have no relevance to this cause.

In view of the foregoing it is submitted that the court below erred in directing the expulsion from Union membership of the owner driver peddlers.

ARGUMENT

I. THE COURT BELOW IN REQUIRING THE UNION TO EXPEL AND TO REFUSE TO READMIT ITS OWNER-DRIVER PEDDLER MEMBERS IMPROPERLY AND UNNECESSARILY INTERFERED WITH THE INTERNAL AFFAIRS OF THE UNION.

A. The relief granted by the Court below should be subjected to careful scrutiny by this Court in order to insure that the remedial, non-punitive function of Sherman Act civil decrees will be preserved.

An equity decree issued by a single judge requiring a labor union to expel from its membership certain owner-driver peddlers is here for review by this Court. Historically, "injunctive process was designed to deter, not to punish. * * * The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." *Hecht Company v. Bowles*, 321 U. S. 321, 329-330. The applicability of these concepts to civil cases arising under the Sherman Act is well settled.

In civil actions under the Sherman Act the courts "may not impose penalties in the guise of preventing future violations." *Hartford Empire Co. v. United States*, 323 U. S. 386, 409. Or as more recently stated, "Courts are not authorized in civil proceedings to punish violators, and relief must not be punitive." *United States v. Du Pont De Nemours Co.*, 366 U. S. 316, 326.

This Court has recognized an "obligation to intervene in this most significant [remedy] phase of the case when [it] concluded that there were inappropriate provisions in the decree." *United States v. United States Gypsum*

Co., 340 U. S. 76, 80. And because Sherman Act cases come here directly from the district courts, "the relief granted by a trial court in an anti-trust case . . . has always had the most careful scrutiny of this Court." *International Boxing Club v. United States*, 358 U. S. 242, 253.

Recognizing the remedial function of Sherman Act decrees and the amplitude of this Court's review of such decrees, we consider first the proper role of an anti-trust decree where, as here, both employees and non-employees are members of a union which has been found to have violated the Sherman Act.

I. It is not a proper function of a court, in anti-trust case, to determine the "proper subject[s] of Unionization."

The decree entered below requires the Union to "expel promptly from membership all grease peddlers" and to "refuse membership at any time in the future to any grease peddler." R. 551. Since this provision is typical of those presently sought in cases involving labor unions admitting non-employees to membership, the decree cannot be justified on the claim that it is required by the particular facts of this case. Indeed, the major premise of the Justice Department[1] and the court below[2] is that (R. 47):

[1] The Justice Department, as a matter of enforcement policy, seeks such decrees in cases involving "unions which are composed of a mixed membership, to-wit, both employers and employees." Address by Victor R. Hansen, Assistant Attorney General in charge of the Anti-Trust Division, delivered 31 January 30, 1958. Reported in 41 LRRM 91, 94. *See also United States v. Fish Smoking & Trading Corporation*, 183 F. Supp. 227 (S. D. N. Y.).

[2] In the court below the Justice Department argued (Reply Br. 2): "This defendant Union ought properly to be returned to status as a joint sole labor organization in which its sole concern is the interest of employee-members. * * * [The] Union has no legitimate interest in the representation of grease peddlers." *Also* Motion to Affirm, pp. 5-6.

> "... The membership of so-called 'independent contractors' in a labor union is not proper unless the purpose of the membership is to secure better wages and working conditions for all union members through the elimination of competition caused by the fact that the independent contractor and the union employees perform the same function."

Thereupon the court below held (R. 48):

> "Defendant peddlers and the defendant Union's employees in this case did not compete with each other. Therefore, the peddlers are not a labor group and are not the proper subject of unionization."

Based upon the premise that the owner-driver-peddlers were "not the proper subject of unionization" the court below felt free to import, in toto, the body of case law dealing with stock divestiture and corporate dissolution. At this juncture we consider only the major premise and will consider the applicability of divestiture and dissolution decrees to labor unions in a subsequent portion of this brief.

The court below in concluding that owner-driver-peddlers were not "proper subject[s] of unionization" necessarily assumed that it is a proper function of a court in a Sherman Act case to determine whether given individuals have a legitimate interest in union membership. This is not so.

The right to form, join and assist labor unions is a fundamental one and exists independently of legislative enactment. *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; *Alabama Coal Utility Workers v. Consolidated Edison*, 309 U. S. 261, 263. Neither the Sherman Act nor any other federal statute purports to "deny to . . . a . . . labor organization the right to determine eligibility to its membership." *Steele v. Louisville & Nashville R. R.*

Co., 323 U. S. 192, 204. *See also Oliphant v. Locomotive Firemen*, 262 F. 2d 359 (C. A. 6), *cert. denied* 359 U. S. 935.

Congress in its direct regulation of labor unions has carefully refrained from prescribing the conditions of union membership. For example in Section 8 of the Labor Management Relations Act (Taft-Hartley), 29 U. S. C., Sec. 158, Congress expressly disclaimed any intention to "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Amendments to the Labor Management Reporting and Disclosure Act (Landrum Griffin), 29 U. S. C., Sec. 401, which would have established federal statutory regulations of Union admission standards were defeated. *See* Aaron, "The Labor Management Reporting and Disclosure Act of 1959," 73 Harv. L. Rev. 851, 860-861. And Section 4 of the Norris-LaGuardia Act, 29 U. S. C., Sec. 104, singles out for separate condemnation injunctions against "becoming or remaining a member of any labor organization. . . ."

These statutes, irrespective of any given applications, evidence a broad, continuing Congressional purpose to refrain from interference with union admission standards. In construing the Sherman Act and formulating decrees implementing that Act—which contains no reference to unions or union membership—the courts should not be oblivious to the intent of Congress manifested in statutes such as the Norris-LaGuardia Act. *Cf. Southern S. S. Co. v. NLRB*, 316 U. S. 31, 47. Confirmatory of this is the declaration in *United States v. Hutcheson*, 312 U. S. 219, 231, that the Sherman, Clayton and Norris-LaGuardia Acts must be read "as a harmonizing text of outlawry of labor conduct."

The suggestion that statutes such as the Norris-LaGuardia Act may be dismissed from consideration because no "labor dispute" exists is inadmissible. Section 6 of the Clayton Act, 15 U. S. C., Sec. 17, prohibits the courts

from viewing unions "or the members thereof" as unlawful combinations. To read "members" as including only "employee-members" is to adopt a mode of construction which has not been followed in almost a quarter of a century.

But perhaps it is more immediately significant to remember that a union does not lose its status as a labor organization or its statutory protection as a consequence of the fact it engaged in conduct violative of the Sherman Act. A finding that a union has violated the Sherman Act, of course, calls for the issuance of an order prohibiting not only the conduct found to be unlawful but related conduct as well. *E. g. Teamsters Local 167 v. United States*, 291 U. S. 293, 299. But such orders should not restrain a union "from doing the very things that the Clayton Act specifically permits unions to do." *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 812. A finding of anti-trust violation does not justify the entry of a decree which "runs directly counter to the Clayton and the Norris-LaGuardia Act." *Ibid.*

The sum of this is that Congress has eschewed an intention to regulate the admission standards of labor organizations. The point has been made repeatedly in statutes relating particularly to unions and their activities. In expounding the Sherman Act, these Congressional bench marks should not be by-passed. Absent express Congressional warrant, and there is none, this Court should not recognize as a proper part of anti-trust policy the authority of the district courts to determine who is or isn't a "proper subject of unionization" (R. 48).

C. The Union's necessary interest in maintaining industry standards sanctions the membership of owner driver-peddlers.

This Court knows that for many years employers and owner-drivers have been in fact the subject of unioniza-

tion in the building and construction trades industry,[4] the service trades,[5] and the transportation industry.[6] The labor movement first learned in 1960[7] that unless active job or wage competition existed between such persons and employee members, such persons were not, according to the Justice Department, a proper subject of unionization.

The Union, of course, acknowledges that the record in this case does not conclusively demonstrate by affirmative evidence the existence of present and active job competition between owner-driver-peddlers and employee members. This according to the court below is fatal to the Union's cause (R. 48). In its preoccupation with present active competition the court below blinded itself both to material facts in the record and more importantly to the pages of industrial history. The record demonstrates that each of the eight processing plants involved in this case employs persons who are members of the Union (R. 53). Four of the processors employ persons who are members of the Union and who are engaged in the transportation of grease from restaurants and other institutions to the processors' plants (R. 59).

The contention made by the Justice Department that a union representing employee drivers has "no legitimate interest" (Gov. Reply Br., p. 10, filed below) in representing owner-driver-peddlers "who perform a job function identical to that of employee drivers disregards the realities of industrial life. Even without the guidance of the Norris-LaGuardia Act,[8] this Court acknowledged the [illegible]

[4] *Sykes v. Tile Layers Union*, 301 U. S. 408.

[5] *Bakers & Pastry Drivers v. Wohl*, 315 U. S. 769; *Milk Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91.

[6] *Local v. Oliver*, 352 U. S. 238.

[7] *United States v. Fish Smokers Trade Council*, 183 F. Supp. 227 (S. D. N. Y.).

[8] A case grows out of a "labor dispute" within the contemplation of the Norris-LaGuardia Act, which exists independently of an

disputable fact that employees "are bound to be affected by the standard of wages of their trade in the neighborhood." *American Steel Foundries v. Tri City Council*, 257 U. S. 184, 209. *See also: Thornhill v. Alabama*, 310 U. S. 88, 103. From the earliest days of the International Brotherhood of Teamsters it has recognized the need to organize "persons who own, lease or operate a team or vehicle and perform work under the jurisdiction of [the] International Union" (Ex. B, Art. II, Sec. 2(b), p. 3, R. 39).

The owner-driver-peddler system is the product of employer efforts to avoid the payment of social security, unemployment compensation, workmen's compensation and similar benefits. Students of industrial relations accept this as a commonplace fact of labor history. Leiter, "The Teamsters Union," Bookman Associates, Inc., pp. 82-86, 148-154 (1957); Hill, "Teamsters and Transportation," American Council on Public Affairs, pp. 178-180 (1942). Considering its parentage, it is not surprising that serious economic ills beset the owner-driver-peddler system. *See American Trucking Assoc. v. United States*, 344 U. S. 298, 304-306. The point is rather dramatically underscored by a comparison of Finding of Fact 6 with a relatively recent study of labor problems in transportation. The court below in its Finding of Fact 6 stated (R. 57):

> "These self-employed peddlers have no established places of business; no employees, except an occasional loader; no capital investment except a small equity in a truck; no skill or special qualifications except the ability to load, unload and drive a truck. They drive from restaurant to restaurant picking up small amounts of waste grease in cans and, on the same day, transport and unload the entire collection to one

employee-employer controversy, if "persons," not employees, having a "direct or indirect" interest in the same industry are "interested" in the dispute. The dispute need only involve "maintaining . . . conditions of employment." 29 U. S. C. Sec. 113.

> of the processing companies. Their earnings represent the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck."

Discussing persons so situated, one student has noted:

> "* * * The small owner-operator or 'gypsy' needs only enough capital to make a down payment on a truck and is free to offer his services at whatever rates he may be willing to accept. In order to protect his equity in his truck he tends, under competitive pressures, to progressively lower his rates until he is taking a bare subsistence for his own wages and is providing inadequate reserves for repairs, maintenance, or replacement. He works long hours, attempts to do his own repair work, often disregards health and safety requirements and load restrictions * * *." Gillingham, "The Teamsters Union on the West Coast," Institute of Industrial Relations, University of California, p. 35 (1956).

In light of the history of litigation before this Court involving union efforts to represent owner driver peddlers, the findings of the Interstate Commerce Commission (*American Trucking Assns., supra*) and the finding and conclusions of impartial students of the problem, it is submitted that the Union has a legitimate interest in retaining the membership of the owner-driver peddlers involved in this case.

To acknowledge the valid interest of a labor organization in retaining employers or owner-drivers as members is not to suggest that otherwise unlawful conduct is immunized. The court below properly enjoined those acts found to be unlawful as well as related acts. Provisions for visitation and inspection are contained in the decree, as are provisions requiring the submission of written re-

ports[9] (R. 76-77). Thus, both in substantive and procedural terms significant assurances of future compliance are contained in the decree entered below. The effectiveness of these provisions is in no way dependent upon the penal, forfeiture provisions which the Justice Department is defending in this Court.

In *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 94-96, this Court had occasion to recognize the threat to union standards inherent in the owner driver-peddler system. Recognizing the existence of such a threat to union standards, the contention "that the conditional abandonment of the vendor system . . . was . . . unrelated to labor's efforts to improve working conditions . . ." (311 U. S. at 98) was rejected. The possible success of any future effort to secure an abandonment of the peddler system involved in this case will be substantially diminished unless the Union retains as members the owner-driver-peddlers.

Similarly, an "elimination of price competition based on differences in labor standards is the objective of any national labor organization, but this effect on competition is not considered to be a violation of the anti-trust laws." *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 503-504. This legitimate goal may be accomplished by regulation of "the hours in which business may be done" and such regulations "make a special appeal where, as here, they tend to shorten the working day . . ." *Board of Trade v. United States*, 246 U. S. 231, 241. The Union's effort to take wages out of competition by regulating hours of work obviously will be impeded by the loss of its owner-driver-peddler members.

The Union may reasonably hope that the owner-driver-peddlers, as members, would refrain from acting as strike

[9] Upon remand, the court below will be asked to strike this particular portion of the decree. *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, 718n, 728

breakers during strikes by employee members. And to any event the possibility that as members the owner-driver peddlers would support such disputes might well provide the catalyst necessary to bring about a settlement of future negotiations on behalf of employee members of the union. Similarly insurance and other fraternal benefits are available to the owner-driver-peddlers as a consequence of their union membership.

The peddler system cannot be ignored by labor organizations in the transportation and service industries, at least not if such unions are to survive. Where, as here, violations of law have occurred an order running against the unlawful and related conduct will issue. But the existence of violations of law should not result in a forfeiture by equity decree of the unions' legitimate interests. *Cf. New York, N. H. & H. R. Co. v. Interstate Commerce Commission*, 200 U. S. 361, 404; *National Labor Relations Bd. v. Express Pub. Co.*, 312 U. S. 426, 435, 437. The decision below whether measured by a yardstick of precedent or history or equity is plainly wrong.

D. Divestiture and dissolution are plainly inapposite remedies in anti-trust cases involving labor organizations.

No serious student of the labor movement questions "the obvious fact that business corporations by virtue of their creation by the state and because of the nature and purpose of their activities, differ in many significant respects from unions . . . and accordingly owe different obligations to the federal and state governments." *United States v. White*, 322 U. S. 694, 697-698. *See also, Louisiana v. N. O. C. & C. P.*, 366 U. S. 293, 296. Even in cases involving corporate monopoly the harsh remedies of divestiture and dissolution are not preferred except in cases where the stock acquisition or merger is itself the violation. *See, e. g., United States v. Terminal R. Assoc.*, 224 U. S. 383, 409-411 (1912); *Associated Press v. United*

States, 326 U. S. 1, 24. The instances of corporate monopoly in which divestiture has been decreed are in no way similar to cases such as this one.

Surely a share of General Motors voting stock held by a company controlled by the DuPont family is not the legal or factual equivalent of a union card held by a man whose only asset is a small equity in a truck and whose only skill is the ability to drive his truck. Nor can a valid comparison be drawn between the membership of 35 to 45 owner driver-peddlers in a local labor union and a case in which "the powerful interests of James J. Hill and J. Pierpont Morgan coalesce to place in one controlling parent the stock of the Great Northern and Northern Pacific Railways, *Northern Secur. Co. v. United States*, 193 U. S. 197 . . ." *United States v. DuPont De Nemours & Co.*, 366 U. S. 316, 370 (dissenting opinion).

If the Justice Department is permitted to import divestiture and dissolution notions into cases involving labor organizations, the very structure of the labor movement necessarily becomes a subject of its enforcement policies. It is not the function of courts exercising anti-trust jurisdiction to run a business (*United States v. Paramount Pictures, Inc.*, 334 U. S. 131, 163) and it should not be their function to determine the structure of labor organizations. Certainly the interest of a labor union in determining its membership is no less important than a corporation's right to select its customers. *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, 728-729. Neither should be subject to forfeiture on account of a finding of anti-trust violation. "[T]he court may not create, as to the defendants, new duties the prescription of which is the function of Congress." *Hartford-Empire Co. v. United States*, 323 U. S. 386, 409.

Had concepts of divestiture been applied in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, presumably

Local 3 would have been "divested" of all of its members participating in the restraint of trade. The same must be said of the members participating in the restraints involved in *Teamsters Local 167 v. United States*, 291 U. S. 293. But this has not been and should not be the course of decision in this Court. "The labor of a human being is not a commodity or article of commerce" 29 U. S. C., Sec. 17; and the "members" of trade unions are not to "be held or construed to be illegal combinations . . ." 29 U. S. C., Sec. 52. The provisions of the judgment requiring the Union to expel and to refuse admittance to owner driver peddlers should be stricken.

II. ONLY FOUR OWNER DRIVER-PEDDLER MEMBERS WERE JOINED AS PARTIES AND IT WAS THEREFORE IMPROPER TO DECREE THE EXPULSION OF ALL OWNER DRIVER PEDDLERS

Only four of the 35 to 45 owner-driver peddlers subject to expulsion under the judgment of the Court, are parties to this proceeding (R. 56-57). The complaint does not allege that either the Union or the individual defendants were joined other than in their individual capacity (R. 2-3). Each owner-driver-peddler has a separate and distinct statutory[19] and contractual interest in his own membership. *Cf. International Association of Machinists v. Gonzales*, 356 U. S. 617, 618-619. This interest cannot be denied, consistently with the requirements of due process, absent a full and fair hearing. *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 232-233; *United States v. DuPont De Nemours & Co.*, 366 U. S. 316, 335.

Since anti-trust decrees are personal rather than *in rem* the suggestion that the owner-driver peddlers were free

[19] Title I of the Labor Management Reporting and Disclosure Act expressly guarantees to union members the right to a "full and fair hearing" prior to expulsion from membership. 29 U. S. C. 411 (a) (5).

to intervene (Motion to Affirm, p. 11) is beside the point. The individual owner-driver peddlers obviously have individual interests. Where, as here, the Justice Department seeks to extinguish such interests it should be required to join as parties those against whom it is proceeding. *Compare: Hughes v. United States*, 342 U. S. 353, 357-358. Thus, independently of the question of the character of the relief to be granted, it is submitted that the case should be remanded for the purpose of according a hearing to those against whom the judgment was issued.

CONCLUSION.

Labor organizations acting in combination with businessmen who are engaged in monopoly practices are subject to appropriate remedial orders. But the fact of violation does not and should not operate as a *pro tanto* repeal of the Clayton and Norris LaGuardia Acts. Nor does the fact of violation confer upon the Justice Department authority to act as arbiter of the membership standards of labor organizations or of the "proper subject[s] of unionization."

For the foregoing reasons it is respectfully submitted that those portions of the judgment below relating to the membership of owner-driver peddlers be stricken from the decree.

Respectfully submitted.

DAVID PREVIANT,
212 West Wisconsin Avenue,
Milwaukee 3, Wisconsin.

CHARLES HACKLER,
1621 West Ninth Street,
Los Angeles 15, California.
Attorneys for Appellants.

APPENDIX A

Sherman Anti Trust, Sections 1 and 2, U. S. C. Title 15, Sections 1 and 2.

§ 1. *Trusts, etc., in restraint of trade, illegal; exception as to resale price agreements, penalty.*

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of this description are lawful as applied to interstate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be deemed a method of competition under section 45 of this title; *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage

in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693."

"4. *Jurisdiction of courts; duty of district attorneys; procedure.*

"The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1-7 of this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. July 2, 1890, c. 647, § 4, 26 Stat. 209; March 3, 1911, c. 231, § 291, 36 Stat. 1167."

Clayton Act, Sections 6 and 20, 15 U. S. C., Section 17, and 29 U. S. C., Section 52.

"17. *Antitrust laws not applicable to labor organizations.*

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the

anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws. Oct. 15, 1914, c. 323, § 6, 38 Stat. 731."

"52. *Statutory restriction of injunctive relief.*

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working;

or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. Oct. 15, 1914, c. 323, § 20, 38 Stat. 738."

Norris-LaGuardia Act, Section 4, 29 U. S. C., Section 104:

"104. *Enumeration of specific acts not subject to restraining orders or injunctions.*

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. March 23, 1932, c. 90, § 4, 47 Stat. 70."

National Labor Relations Act, Section 8 (b) (1); 29 U. S. C., Section 158 (b) (1):

"(b) It shall be an unfair labor practice for a labor organization or its agents

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."